

**AMENDED AND RESTATED BYLAWS  
OF  
RADIO CATSKILL**

**Articles I-VI Adopted March 19, 2014  
Articles VII – XVIII Adopted May 21, 2014  
Restated Bylaws Adopted in their Entirety May 21, 2014**

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**ARTICLE I  
NAME**

The name of the corporation is Radio Catskill, hereinafter called “the Corporation.” The seal of the Corporation is inscribed with the name of the Corporation and the year of its incorporation.

**ARTICLE II  
MEMBERS**

The Corporation shall have no members within the meaning of the New York Not-for-Profit Corporation Law. Contributors, however, may be denominated “members” in return for annual contributions to the Corporation at specified levels, but shall have only such privileges as are specified by the Board from time to time.

**ARTICLE III  
OFFICES**

The principal office of the Corporation shall be in the Village of Jeffersonville, Sullivan County, State of New York.

**ARTICLE IV  
COMPLIANCE WITH THE REQUIREMENTS OF THE  
FEDERAL COMMUNICATIONS ACT OF 1934, 47 U.S.C., 396, et seq., as Amended**

**Section 1. Duty of Compliance.** The Corporation, as a recipient of station grants from the Corporation for Public Broadcasting (“CPB”), is required to comply with the requirements of the Communications Act of 1934, 47 U.S.C. 396, et seq., as amended (“Federal Communications Act”), and to certify its continued compliance with the Federal Communications Act.

**Section 2. Areas of Compliance.** Notwithstanding other areas of compliance to which the Corporation may be or become subject, five specific areas of the Federal Communications Act with which the Corporation must comply are:

- a. Meetings Which Must Be Open to the Public. 47 U.S.C. 396 (k)(4)
- b. Financial Information Which Must be Available to the Public. 47 U.S.C. 396 (k)(5)
- c. Establishment of a Community Advisory Board. 47 U.S.C. 396 (k)(8)
- d. Equal Employment Opportunity regulations and requirements 47 U.S.C. 396(k)(11)
- e. Donor List and Political Activities Requirement 47 U.S.C. 396(k)(12)

**Section 3. CPB Explanation of the Certification Requirements.** The CPB's document, "Certification Requirements for Station Grant Recipients" ("CPB Certification Requirements") is attached to these Bylaws for reference as Appendix A. In the event that the CPB issues revisions, additions, replacements or any other changes to this document (or other document created to serve this purpose), the most recently issued version will become Appendix A. Full details of the Federal Communication Act's requirements may be obtained from the CPB or viewed at its website.

## **ARTICLE V BOARD OF TRUSTEES**

**Section 1. Powers and Duties.** The Board shall have the general power to control and manage the affairs and property of the Corporation subject to applicable law and in accordance with the purposes and limitations set forth in the Certificate of Incorporation and these Bylaws.

- a. The Board may:
  - i. Appoint and discharge advisors and consultants who have skills necessary or helpful to the Corporation.
  - ii. Employ and discharge persons for the furtherance of the purposes of the Corporation.
  - iii. Exercise all other powers necessary to manage the affairs and further the purposes of the Corporation in conformity with the Certificate of Incorporation and these Bylaws.

b. The Board shall:

- i. Direct the President and Treasurer of the Corporation to present at the annual meeting of the Board a financial report, verified by the President and Treasurer or a majority of the Trustees, or certified by an independent public accountant or certified public accountant or a firm of such accountants selected by the Board. This report shall be filed with the records of the Corporation and a copy or abstract thereof entered in the minutes of the proceedings of the annual meeting of the Board. The financial report shall be made available to the public.
- ii. Appoint all Officers for the Corporation and approve the members of any Committee of the Board appointed by the President.

**Section 2. Number.** The number of Trustees constituting the Entire Board shall be between 7 and 15. At least 2 but no more than 3 Trustees shall be elected by the Voting Volunteers pursuant to Section 5(b) below. Within this range, the number of Trustees may be increased or decreased by a majority vote of the entire Board. In accordance with paragraph 3 of the Certificate of Incorporation, any increase or decrease in the number of Trustees outside the current range of seven 7 to 15 shall require a vote of two-thirds of the Entire Board and in no event shall the number of Trustees be more than 25 or fewer than 5. The number of Trustees constituting the Entire Board shall be the number of Trustees in office and entitled to vote following the most recent election of Trustees. No decrease in the number of Trustees constituting the Entire Board shall shorten the term of any incumbent Trustee.

**Section 3. Qualification.** Each Trustee shall be at least 18 years of age; a volunteer in good standing of the Corporation; a contributing member of the Corporation in accordance with membership levels set by the Board from time to time; and a citizen of the United States of America.

**Section 4. Term of Office and Staggered Terms.**

a. Term of Office. The term of office of a Trustee shall be three years. A Trustee may serve two consecutive terms after which he or she shall be ineligible to serve for two years before again becoming eligible to stand for election to the Board.

b. Staggered Terms. The terms of the Trustees shall be staggered into 3 equal as possible classes, so that the terms of one-third of the Trustees elected by the

Voting Volunteers and the terms of one-third of the Trustees elected by the Board shall expire each year. Any newly created Trusteeships shall initially be assigned to the class that best preserves the equal proportionality of the 3 classes and thereafter may be elected to serve a for full term of 3 years.

**Section 5. Election.** Trustees may be elected to the Board either through the Election by the Board or the Election by the Voting Volunteers. Regardless of the means of election, all Trustees are equal in status and responsibility as members of the Board.

a. Election by the Board. To become a Trustee elected by the Board, a person shall be nominated by the Nominating Committee, or by a Trustee currently in office, and elected by a majority of Trustees then in office. The Nominating Committee, with the assistance of the Corporation's staff shall make open announcements seeking candidates for nomination to the Board of Trustees and an application form for those seeking to nominate a candidate for election to the Board shall be made publicly available at the office of the Corporation in Jeffersonville and on the Corporation's website.

b. Election by the Voting Volunteers. To become a Trustee elected by the Voting Volunteers a person shall be nominated and elected in accordance with the process outlined below.

i. Definition of Voting Volunteer. A Voting Volunteer is a volunteer in good standing who has become eligible to vote and to seek office in the Election of Voting Volunteers by contributing at least 36 hours of volunteer service to the Corporation between June 1<sup>st</sup> and May 31<sup>st</sup> of the year immediately preceding the election, such eligibility to be confirmed by the staff member responsible for coordinating Volunteers and the staff member responsible for overseeing programming. Volunteers whose hours of service are at, or close to, the 36-hour threshold must submit a record of their hours to the staff member responsible for coordinating volunteers or to the staff member responsible for overseeing programming for their review, such submission to occur by a designated deadline.

ii. Services Not Counted Toward the Eligibility Threshold. The hours logged in the production and airing of radio programs that are not the sole property of the Corporation, i.e. programs that air on other radio stations without payment of royalties to the Corporation for such airing rights, do not count toward the 36 hours needed to become a Voting Volunteer. The Corporation encourages the producers of such programs to become Voting Volunteers by contributing at least 36 hours of

volunteer service to the Corporation by other means, such as shift work, answering phones, working at events and the like.

iii. Public Announcement of Voting Volunteers. A list of all Voting Volunteers shall be posted at the Corporation's Office in Jeffersonville and on the Corporation's Listserve one month prior to the mailing of Volunteer candidate Ballots.

iv. Extenuating Circumstances and Dispute Resolution. Any volunteer wishing to dispute his or her exclusion from the list of Voting Volunteers, or to explain extenuating circumstances that might have prevented them from completing the full 36-hour eligibility requirement, may do so in writing to the staff member responsible for coordinating Volunteers and the staff member responsible for overseeing programming, up to and including 14 days prior to the date the ballots are mailed. A determination of eligibility shall be made and communicated to the volunteer at least 7 days prior to the date the ballots are mailed.

v. Nomination by Petition. In order to be nominated for Election by the Voting Volunteers, a Voting Volunteer seeking office must receive the signed support of 10 other Voting Volunteers on a petition provided for that purpose by the Corporation and submitted to the Corporation by the designated deadline.

vi. Election. The Election by the Voting Volunteers shall be conducted by written ballot. The ballots listing the candidates for election and their accompanying statements shall be sent to the mailing addresses of record of the Voting Volunteers 21 days prior to the Annual Meeting in June. Ballots may be returned by mail or in person and may be delivered to the staff person responsible for coordinating volunteers or the staff person responsible for coordinating programming up until the commencement of the Annual Meeting. The votes shall be counted and the results announced at the Annual Meeting in June.

vii. Ineligibility of Current Trustees to Vote in the Election by Voting Volunteers. Although current Trustees may meet the eligibility requirements to be Voting Volunteers due to the hours of volunteer service contributed, they are nonetheless ineligible to vote in the Election by Voting Volunteers, due to their simultaneous and ex-officio inclusion in the process for Election by the Board and their eligibility to vote in that election.

**Section 6. Removal.** Any Trustee may be removed at any time for cause by a two-thirds vote of the Entire Board at a regular meeting or special meeting of the Board

called for that purpose. Any trustee missing three consecutive meetings of the Board shall be automatically removed without further action of the Board unless a majority of the Trustees has excused such Trustee from attendance due to extreme circumstance(s). Among other possible circumstances constituting "cause," losing status as a volunteer in good standing shall constitute "cause" for purposes of this section. Notice of any meeting at which the removal of a Trustee is on the agenda, shall include information to that effect and the Trustee considered for removal shall be given an opportunity to be present and to be heard at the meeting at which his or her removal is considered.

**Section 7. Resignation.** Any Trustee may resign from the Board at any time by delivering a resignation in writing to at least two members of the Executive Committee. The acceptance of a resignation by the Board shall not be necessary to make the resignation effective, but no resignation shall discharge any accrued obligation or duty of a Trustee.

**Section 8. Leave of Absence.** The Board may consider a request made by any Trustee for a leave of absence from the Board on a case-by-case basis.

**Section 9. Vacancies and Newly Created Trusteeships.** Any newly created Trusteeships and any vacancies on the Board arising at any time and from any cause may be filled at any meeting of the Board by a majority of Trustees then in office, regardless of their number. The Trustees so elected shall serve until the next annual meeting at which the election of Trustees is the regular order of business and his or her successor is elected or appointed or qualified. A vacancy on the Board shall be deemed to exist on the occurrence of any of the following:

- a. The death, resignation or removal of any Trustee;
- b. An increase in the authorized number of Trustees by resolution of the Board;
- c. The failure of the Trustees, at any annual or other meeting of Trustees at which any one or more Trustees are to be elected, to elect the full authorized number of Trustees to be voted for at that meeting.

**Section 10 Meetings.**

a. Open Meetings Requirement of the Federal Communications Act. In accordance with Article IV above, the Corporation is required to comply with the open meetings requirement of the Federal Communications Act. A detailed



explanation of the requirements can be found in Appendix A to these bylaws.

i. Definition of Meeting. The following elements must be present in order to meet the statutory definition of meeting: (1) a quorum, for the purpose of taking action, must be in attendance; (2) deliberations must take place; (3) the deliberations must determine or result in disposition of the business at hand. Certain gatherings of governing and advisory bodies are not “meetings” because they do not involve deliberations to determine joint conduct. Examples of gatherings that are not meetings include background or status briefings; sessions to complete menial tasks; events that are purely social in nature; or assemblies to assign responsibilities for particular projects to individual board or committee members for fact finding and subsequent report to the body as a whole.

ii. Exceptions to the Open Meetings Requirements. The Federal Communications Act permits the Board, Advisory Board or any committee to hold closed sessions to consider: 1) matters relating to individual employees; 2) proprietary information; 3) litigation and other matters requiring the confidential advice of counsel; 4) commercial or financial information obtained from a person on a privileged or confidential basis; 5) the purchase of property or services whenever the premature exposure of such purchase would compromise the business interests of the Corporation.

iii. Explanation of Closed Session. If any meeting is closed pursuant to the provisions in subsection (ii) above, the Corporation shall make available to the public within a reasonable period of time, a written statement containing the reasons for closing the meeting.

b. Open Meetings Policy of the Corporation. In addition to the requirements of the Federal Communications Act, it is also the Policy of the Corporation that meetings of the Board, its committees and any Advisory Board or committees be open to the public and may also include a public comment period. Regardless of whether or not the Corporation is subject to the Open Meetings requirements of the Federal Communications Act, it will continue to follow the practice of holding open meetings.

c. Time and Place of Meetings of the Board. Meetings of the Board may be held at any place within or without the State of New York as the Board may from time to time fix, or as shall be specified in the notice thereof. Minutes from these meetings will be forwarded to station management by the Secretary and posted at

the Corporation's Jeffersonville studios and on the website following their approval and acceptance by the Board.

i. Annual Meetings. The annual meeting of the Board shall be held in June of each year.

ii. Regular Meetings. Regular meetings of the Board are held at least eight times a year. An annual schedule of meetings is adopted at the first meeting following the annual election and posted at the Corporation's Jeffersonville office and on the Corporation's website.

iii. Special Meetings. Special meetings of the Board shall be held whenever called by the President of the Board, or any Trustee upon the written demand of 2 Trustees (for a total of 3 Trustees) on the Board. Special meetings shall be held at a time and place fixed by the person or persons calling the meeting.

iv. Emergency Meetings. In rare instances, emergency situations may make it impractical to hold an open meeting preceded by one week's advance notice. In such situations advance notice will be given to the extent possible, as provided in Section 11 below. If circumstances require that any such emergency meeting be held without one week's advance notice, the Board shall, within a reasonable period of time thereafter, make available to the public an explanation of why the emergency situation precluded holding an open meeting with reasonable notice.

## **Section 11. Notice of Meetings.**

a. Notice to the Public. The Corporation shall comply with the notice requirements of the Federal Communications Act, a detailed description of which can be found in Appendix A. The Federal Communications Act notwithstanding, the date and time of meetings will be announced in the Upcoming Events section on the Corporation's website at least one week in advance of the scheduled meeting date and will also be announced on-air in the days leading up to the meeting. In the rare instance of an Emergency Meeting, the Corporation will do its best to provide notice to the public by broadcasting the time and place of the meeting on air, such broadcast notices to begin as soon as the time and place of the meeting has been determined, and at frequent intervals through out the intervening period until such meeting has been adjourned.

b. Notice to Trustees. Regular meetings of the Board may be held without additional notice of the time and place if such meetings are fixed by the Bylaws or the Board. Notice of the time and place of the annual meeting, each regular meeting not fixed by the Board and each special meeting shall be given to each Trustee by (i) e-mail, facsimile or telephone at least 5 days before the day on which the meeting is to be held or (ii) mailed to each Trustee, postage prepaid, addressed to him or her at his or her residence or usual place of business, or at such other address as he or she may have designated at least 7 days before the day on which the meeting is to be held. To discuss matters requiring prompt action, notice of special meetings may be sent to each Trustee by e-mail, facsimile, or telephone, or given personally, no less than 48 hours before the time at which such meeting is to be held, unless an emergency meeting must be held within 48 hours, in which case the notice period may be waived by any Trustee who submits a signed waiver of notice, whether before or after the meeting, or who attends the meeting without protesting the lack of notice prior to the meeting or at its commencement.

**Section 12. Alternative Meeting Formats.** Any one or more Trustees of the Board or any committee thereof may participate in a meeting of the Board or committee thereof by means of conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each Trustee can participate in all matters before the Board, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board or committee. In accordance with the requirements of the Federal Communications Act (a detailed description of which is attached as Appendix A), the Corporation will provide reasonable notice to the public of an alternative meeting format and provide a means for the public to “attend” by listening, observing or participating in such meetings.

**Section 13. Quorum.** Unless a greater proportion is required by law or these Bylaws, a quorum shall be majority of the Trustees of the Board.

**Section 14. Voting.** Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, at any meeting of the Board at which a quorum is present, the affirmative vote of a majority of Trustees present at the time of the vote, shall be the act of the Board. If at any meeting of the Board there shall be less than a quorum present, the Trustees present may adjourn the meeting until a quorum is obtained. The following acts of the Board require the affirmative vote of at least two-thirds of the entire Board:

- a. A purchase, sale, mortgage or lease of real property of the Corporation, however, beginning July 1, 2014 a two-thirds vote is no longer required for these acts unless such acts concern all or substantially all of the assets of the Corporation
- b. A sale, lease, exchange or other disposition of all or substantially all of the assets of the Corporation.
- c. A change to the numerical range of the members of the Board, as required by the Certificate of Incorporation.
- d. Removal of a Trustee
- e. Approval of a Trustee's request for a leave of absence.
- f. Amendment or repeal of the Bylaws

**Section 15. Compensation.** No compensation of any kind shall be paid to any Trustee for the performance of his or her duties as Trustee, except that the Board may authorize reimbursement of expenditures reasonably incurred on behalf of activities for the benefit of the Corporation.

## **ARTICLE VI OFFICERS**

**Section 1. Number, Qualification and Election.** At the Annual Meeting, the Board shall appoint its Officers from among its Trustees. The Officers of the Corporation shall be the President, Vice President, Treasurer and Secretary, and such other Officers, if any, including one or more Vice Presidents as the Board may from time to time appoint. A person may not hold more than one office at a time.

**Section 2. Term of Office.** Each Officer shall be appointed for a one-year term and shall hold office until his or her successor is duly elected and qualified, or until his or her death, resignation or removal.

**Section 3. Removal.** An Officer of the Corporation may be removed from their position as Officer for cause by a vote of the majority of the entire Board.

**Section 4. Vacancies.** Should an Officer be unable to complete his or her term of office, a successor may be appointed to fill the unexpired portion of his or her term at any meeting of the Board of Trustees.

**Section 5. President: Powers and Duties.** The President of the Board shall preside at all meetings of the Board and the Executive Committee. The President may, subject to the direction of the Board, have general charge of the business affairs and property of the Corporation and its operations and shall keep the Board fully informed about the activities of the Corporation. He or she has the power sign and

execute, in the name of the Corporation, all contracts authorized by the Board, including any deed, mortgage, bond, contract, agreement or other instruments, unless the Board shall specifically require an additional signature. The President shall perform all the duties usually incident to the office of the President and shall perform such other duties as from time to time may be assigned by the Board.

**Section 6. Vice President: Power and Duties.** A Vice President shall have such powers and duties as may be assigned to him or her by the Board. In the absence of the President, the Vice President(s), in the order designated by the Board, shall perform the duties of the President.

**Section 7. Secretary: Powers and Duties.** The Secretary shall keep the minutes of the annual meeting and all meetings of the Board in books provided for that purpose. He or she shall be responsible for the giving and serving of all notices of the Corporation and shall perform all the duties customarily incidental to the office of the Secretary, subject to the control of the Board, and shall perform such other duties as shall from time to time be assigned by the Board.

**Section 8. Treasurer: Powers and Duties.** The Treasurer shall keep or cause to be kept full and accurate accounts of receipts and disbursements of the Corporation, and shall deposit or cause to be deposited all monies, evidences of indebtedness and other valuable documents of the Corporation in the name and to the credit of the Corporation in such banks or depositories as the Board may designate. At the annual meeting the Treasurer shall render a report of the Corporation's accounts showing in appropriate detail:

- a. The assets and liabilities of the Corporation as of a twelve-month period terminating not more than six months prior to the meeting;
- b. The principal changes in assets and liabilities during that fiscal period;
- c. The revenues or receipts of the Corporation, both unrestricted and restricted to particular purposes during said fiscal period; and
- d. The expenses or disbursements of the Corporation, for both general and restricted purposes during said fiscal period.

Such report shall be filed with the minutes of the annual meeting of the Board. The report may consist of a verified or certified copy of any report by the Corporation to the Internal Revenue Service or the Attorney General of the State of New York, which includes the information specified above. The Treasurer shall, at all reasonable times, exhibit the Corporation's books and accounts to any Officer or Trustee of the Corporation, and whenever required by the Board, render a statement of the Corporation's accounts and perform all duties incident to the position of Treasurer, subject to the control of the Board.

**Section 9. Compensation.** No compensation of any kind shall be paid to any Officer for the performance of his or her duties as Officer, except that the Board may

authorize reimbursement of expenditures reasonably incurred on behalf of activities for the benefit of the Corporation.

## **ARTICLE VII COMMITTEES OF THE BOARD**

The Board, by resolution adopted by a majority of the entire Board, may designate from among its members an executive committee and other committees, each consisting of three or more Trustees. The Board may also designate one or more Trustees to serve as alternate members of any Committee of the Board. Alternate committee members will be kept informed about Committee activities and, in the event a Committee member is unable to attend a Committee meeting, the alternate committee member may attend in his or her stead. Each Committee of the Board shall serve at the pleasure of the Board and, to the extent provided in the resolution or in the Certificate of Incorporation or these Bylaws, shall have the authority of the Board, except that no such committee shall have authority as to the following matters:

- a. The filling of vacancies in the Board of Trustees or in any committee
- b. The fixing of compensation, if any, of the Trustees for serving on the board or on any committee.
- c. The amendment or repeal of the or the adoption of new bylaws
- d. The amendment or repeal of any resolution of the Board that by its terms shall not be so amendable or repealable.

**Section 1. Term of Office.** Committee members shall serve for a one-year term and may be re-appointed to an unlimited number of consecutive terms, for so long as they remain on the Board.

**Section 2. Open Meetings and Notice Requirements.** Committees of the Board are subject to the open meetings and notice requirements of the Federal Communications Act, a detailed explanation of which can be found in the CPB Certification Requirements attached as Appendix A.

**Section 3. Executive Committee.** The Executive Committee shall be comprised of the Officers of the Board. The President of the Board shall also serve as the Chair of the Executive Committee. The Committee shall have only such authority as is designated to it by the Board, and that is not otherwise prohibited by applicable law.

**Section 4. Nominating and Governance Committee.** The Nominating and Governance Committee shall be comprised of a minimum of 3 Trustees appointed by the Board and has ongoing responsibilities to:

- a. Identify expertise needed on the Board and seek candidates with such expertise, through on-air, media and website appeals and, where possible, by interviewing such candidates prior to proposing their nomination to the Board. The committee shall also make a nomination form publicly available at the office of the Corporation and on its website for those seeking to nominate a candidate for election to the Board.
- b. Propose candidates for nomination for election to the Board in the Board's Election who offer the expertise needed on the Board and further the Corporation's diversity goals;
- c. Work to develop the skills and effectiveness of new and current Trustees;
- d. Conduct annual assessments of the performance of the Board and its Trustees.
- e. Perform such other duties that may be assigned by the Board from time to time.

**Section 5. Finance Committee.** The Finance Committee shall be comprised of a minimum of 3 Trustees selected by the Board, at least one of whom should have working understanding of and familiarity with accounting. The Treasurer shall be an ex-officio member of the Committee, and shall serve as its Chair. The Finance Committee has ongoing responsibility to:

- a. Provide general financial management for the Corporation
- b. Prepare the annual budget for review by the Board
- c. Meet at least once following the midpoint of the fiscal year, and at such other times as needed, to review performance against the budget for that year and recommend to the Board for its approval any revisions it considers necessary and appropriate.
- d. Provide guidance to the Board on investment decisions
- e. Recommend to the Board policies for check signing authority, and at what thresholds, and for the reimbursement of expenses reasonably incurred for activities on behalf of the Corporation.
- f. Ensure that the proper federal and state filings are completed and filed on time.

- g. Review, at least annually, the Corporation's insurance coverage and reporting to the Board on its adequacy.
- h. Perform such other duties as may be assigned by the Board from time to time.

**Section 6. Audit Committee.** The Audit Committee shall be comprised of a minimum of 3 Independent Trustees<sup>1</sup> selected by the Board, or shall be comprised of all of the Independent Trustees on the Board. The Treasurer may serve on the Committee but shall not serve as its Chair. It is the Audit Committee's responsibility to:

- a. Oversee the accounting and financial reporting processes of the Corporation and the audit of the Corporation's financial statements.
- b. Recommend to the Board the retention of, or renewal of the retention of the independent auditor and/or external accountant as appropriate.
- c. Review the results of the audit and any related management letter with the independent auditor and report back to the Board
- e. Review the Corporation's internal controls, including its Conflict of Interest Policy and annual disclosure requirements and advise the Board on any revisions or adjustments that may be appropriate.
- f. Oversee the annual disclosure process and review the completed disclosure statements to identify any related party transactions and conflicts, or potential conflicts, of interest, and make recommendations to the Board on how such conflicts should be managed or monitored.
- g. Perform such other duties as may be assigned by the Board from time to time.

**Section 7. Personnel Committee.** The Personnel Committee shall be comprised of at least 3 Independent Trustees selected by the Board. It is the Personnel Committee's responsibility to:

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<sup>1</sup> New York Not-for-Profit Corporation Law §102(23): "Independent Director" [which includes in its meaning Independent Trustee] means a director who: (i) is not and has not been within the last three years, an employee of the corporation or an affiliate of the corporation, and does not have a relative who is, or has been within the last three years, a key employee of the corporation or an affiliate of the corporation; (ii) has not received, and does not have a relative who has received, in any of the last three fiscal years, more than ten thousand dollars in direct compensation from the corporation or an affiliate of the corporation (other than reimbursement of expenses reasonably incurred ...; and (iii) is not a current employee of or does not have a substantial financial interest in, and does not have a relative who is a current officer of or has a substantial financial interest in, any entity that has made payments to, or received payments from, the corporation or an affiliate of the corporation for property or services in an amount which, in any of the last three fiscal years, exceeds the lesser of twenty-five thousand dollars or two percent of such entity's consolidated gross revenues.



- a. Review employee compensation and benefit packages and make recommendations thereon to the Board;
- b. Conduct employee reviews and evaluations;
- c. Keep and maintain a list of applicants for employee positions at the Corporation.
- d. Respond to and resolve employee grievances that are brought to its attention according to the procedures set forth in the Corporation's Grievance Policy.
- e. Perform such other duties as may be assigned by the Board from time to time.

## **ARTICLE VIII ADVISORY COMMITTEES**

The Board may establish one or more Committees of the Corporation<sup>2</sup> to function as advisors to the Board ("Advisory Committees"). Advisory Committees serve at the pleasure of the Board and do not have the authority to bind the Board or the Corporation. Trustees and non-Trustees alike may serve as members, and shall be appointed by the Board. Advisory Committees shall report and make recommendations to the Board at such intervals as are determined by the Board.

**Section 1. Term of Office.** Advisory Committee members shall serve for a one-year term and may be reappointed for an unlimited number of consecutive terms.

**Section 2. Open Meetings and Notice Requirements.** Advisory Committees are subject to the open meetings and notice requirements of the Federal Communications Act, a detailed explanation of which can be found in the CPB Certification Requirements attached as Appendix A.

**Section 3. Development and Community Outreach Advisory Committee.** The purpose of the Committee is to advise the Board and the General Manager regarding the planning of events, membership drives, the identification of grants for which the Corporation may be eligible, and other development campaigns, all subject to the approval of the Board. In addition, the Committee will advise the Board and the General Manager regarding raising the public profile of the Corporation through

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<sup>2</sup> New York Not-for-Profit Law §712(e): "Committees, other than committees of the board ... shall be committees of the corporation. Such committees of the corporation may be elected or appointed in the same manner as officers of the corporation but no such committee shall have the authority to bind the Board."

marketing and public relations and public outreach, and by reviewing and making recommendations about those functions that are on the Corporation's website.

**Section 4. Facilities and Operations Advisory Committee.** The purpose of the Committee is to act in concert with the General Manager, to oversee the condition and maintenance of the Corporation's properties, equipment and facilities and to assess the ongoing technical needs of the Corporation and to identify areas of concern and make recommendations to the Board as appropriate.

## **ARTICLE IX COMMUNITY ADVISORY BOARD**

**Section 1. Federal Requirement.** In accordance with the requirements of the Federal Communications Act (47 U.S.C. 396(k)(8)), the Board shall establish and continuously maintain a Community Advisory Board ("CAB") the composition of which is to be reasonably representative of the diverse needs and interests of the communities served by the Corporation. A detailed explanation of the requirements can be found in the CPB Certification Requirements attached as Appendix A.

**Section 2. Powers and Duties.** The role of the CAB shall be solely advisory in nature, except to the extent other responsibilities are delegated to the CAB by the Board. The CAB shall advise the Board with respect to whether the programming and other policies of the Corporation are meeting the specialized educational and cultural needs of the communities served by the Corporation and may make such recommendations as it considers appropriate to meet such needs. The CAB shall be permitted to review the programming goals established by the Corporation, and the significant policy decisions rendered by the Corporation. In no case shall the CAB have any authority to exercise any control over the daily management or operation of the Corporation. The CAB may also be delegated any other responsibilities as determined by the Board.

**Section 3. Appointment and Independence.** Members of the CAB shall be appointed by the Board. The CAB, and thus its membership, must be distinct from and independent of the Board in order to effectively provide a vehicle for community input to the Board about the Corporation's programming, community service and impact on the community from the station's major policy decisions.

**Section 4. Number and Term of Office.** The CAB shall be comprised of between 7 and 15 members. The term of office of a member of the CAB shall be 2 years. A CAB

member may serve two consecutive terms after which he or she shall be ineligible to serve for two years before again becoming eligible to stand for election to the CAB.

**Section 5. Meetings and Notice.** The CAB is subject to the open meetings and notice requirements of the Federal Communications Act, a detailed explanation of which can be found in the CPB Certification Requirements attached as Appendix A. The CAB shall meet at least quarterly.

**Section 6. Ongoing Compliance.** If there comes a time that the Corporation no longer receives funding from the CPB, it shall nonetheless continue to maintain a CAB that shall function according to the procedures and for the purposes as described in the Federal Communications Act.

## **ARTICLE X EMPLOYEES AND AGENTS**

**Section 1. Appointment.** The Board may from time to time appoint such employees and other agents as it shall deem necessary, each of whom shall hold office at the pleasure of the Board, and shall have such authority and perform such duties as the Board may from time to time determine. To the fullest extent allowed by law, the Board may delegate to any employee or agent any powers possessed by the Board and may prescribe their respective title, terms of office, authorities and duties. Any such delegation of authority shall not alone relieve any Trustee of his or her duty to the Corporation.

**Section 2. Reasonable Compensation and Means of Approval.** Any employee or paid agent of the Corporation is entitled receive a reasonable salary or other reasonable compensation for services rendered to the Corporation when authorized by a majority of the Board. Compensation shall include all economic benefits provided to the employee or agent in return for his or her services to the Corporation including, but not limited to: salary, 401(k) contributions, benefits, severance pay, pension, insurance, and the like. In order for a compensation arrangement to be determined to be reasonable the following conditions must be met:

- a. Advance Approval by Disinterested Members of the Board. The compensation must be approved in advance by the Board, following discussion of and deliberation about the specific terms thereof.
- b. Reliance on Appropriate Comparability Data. In order to determine the reasonableness of compensation, the Board must gather comparable compensation data from at least three similarly situated organizations for similar positions with similar functions. Additionally, the Board may seek information on whether similar services are available in the geographic

area; current compensation surveys compiled by independent firms; or competing offers for the prospective employee.

- c. Adequate and Contemporaneous Documentation of the Board's Decision. The board must contemporaneously document its decision and the reason for the decision. Such documentation should include: i) a description of the terms of the transaction that was approved and the date approved; ii) a list of Trustees present during the discussion and those who voted in the decision; iii) a description of the compatibility data relied upon and how it was obtained; iv) a record of the actions of any Trustees having a conflict of interest. These written records must be approved by the Board as being accurate, complete and reasonable, within a reasonable period of time following the decision and corresponding documentation.
- d. Non-Attendance and Non-Participation by Interested Parties. No person who may benefit from a compensation arrangement may be present or otherwise participate in any Board or committee deliberation or vote concerning that person's compensation, except that the Board or committee may request that the person present information as background or answer questions at a committee or Board meeting prior to the commencement of deliberations or voting thereon.

**Section 3. Removal.** Any employee or agent of the Corporation may be removed with or without cause by a vote of the majority of the entire Board.

## **ARTICLE XI FINANCIAL MATTERS**

**Section 1. Fiscal Year.** The fiscal year for the Corporation shall be the year ending December 31.

**Section 2. Checks, Notes and Contracts.** The Board is authorized to select the banks or depositories it deems proper for the funds of the Corporation and shall determine who shall be authorized on the Corporation's behalf to sign checks, drafts or other orders for the payment of money acceptances, notes or other evidences of indebtedness (and at what thresholds), to enter into contracts or to execute and deliver other documents and instruments. Prior to entering into any contract, the Board shall take such steps as are appropriate or legally required to ensure that the contract is fair, reasonable and in the best interests of the Corporation.

**Section 3. Investments.** The funds of the Corporation may be retained in whole or in part in cash or be invested and reinvested from time to time in such property, real, personal or otherwise, including stocks, bonds or other securities, as the board may deem desirable. In accordance with the New York Prudent Management of

Institutional Funds Act the Corporation shall establish and maintain an Investment Policy.

## **ARTICLE XII**

### **BOOKS**

There shall be kept at the office of the Corporation correct books of account of the activities of the Corporation, including the minute book, which shall contain a copy of the Certificate of Incorporation, a copy of these Bylaws and all appendices attached thereto, copies of the Corporation's policies and all minutes of meetings of the Board.

## **ARTICLE XIII**

### **CONFLICT OF INTEREST POLICY**

The Trustees, Officers and Key Employees of the Corporation have a duty to serve the purposes of the Corporation and to conduct the Corporation's affairs in a manner consistent with those purposes and not to advance their own personal interests. The Board shall create and maintain a Conflict of Interest Policy, which is intended to ensure that the Trustees, Officers and Key Employees act in the Corporation's best interest and comply with applicable legal requirements. The Corporation's Conflict of Interest Policy is attached to these Bylaws as Appendix B and incorporated as if set forth herein.

## **ARTICLE XIV**

### **NON-DISCRIMINATION**

In all of its dealings, neither the Corporation nor its duly authorized agents shall discriminate against any individual or group for reasons of race, color, creed, gender, age, ethnicity, national origin, marital status, sexual orientation, identification or expression, mental or physical disability or any category protected by state or Federal law.

## **ARTICLE XV**

### **INDEMNIFICATION AND INSURANCE**

Section 1. Indemnification. The Corporation may, to the fullest extent now or hereafter permitted by law, indemnify any person made, or threatened to be made, a party to any action or proceeding by reason of the fact that he or she or his or her

testator was a Director, officer, employee or agent of the Corporation, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorney fees. No indemnification may be made to or on behalf of such person if:

- a. His or her acts were committed in bad faith or were the result of his or her active and deliberate dishonesty and were material to such action or proceeding or
- b. He or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled in the transaction or matter in which indemnification was sought.

Section 2. Insurance. The Corporation shall have the power to purchase and maintain all insurance policies deemed to be in the best interest of the Corporation including insurance to indemnify the Corporation for any obligation which it incurs as a result of its indemnification of Directors, Officers and employees pursuant to Section 1 above, or to indemnify such persons in instances in which they may be indemnified pursuant to Section 1 above.

## **ARTICLE XVI AMENDMENTS TO THE BYLAWS**

These Bylaws may be amended or repealed by a two-thirds vote of all Trustees present at any duly called and held meeting of the Board, provided that written notice of the proposed amendment(s), including the text thereof, shall have been conveyed by mail or email to each Trustee at his or her residence or usual address at least 8 and not more than 30 days in advance of such meeting. Reasonable notice of the proposed amendment shall also be given to the public in accordance with these Bylaws and the CPB Certification Requirements which are attached as Appendix A.

## **ARTICLE XVII REFERENCE TO THE CERTIFICATE OF INCORPORATION**

References in these Bylaws to the Certificate of Incorporation shall include all amendments thereto or changes thereof unless specifically excluded by these Bylaws. In the event of a conflict between the Certificate of Incorporation and these Bylaws, the Certificate of Incorporation shall govern.

## **ARTICLE XVIII DISSOLUTION**

**Section 1. Decision to Dissolve.** Given its magnitude, a decision to dissolve the Corporation, including a decision to effectively dissolve the Corporation by the sale of its broadcast license, shall require the 3/4 affirmative vote of the Board. Prior to any such vote, the Board shall consult with the Community Advisory Board at a meeting held for such purpose and conducted in accordance with the open meetings requirements of the Federal Communications Act and these Bylaws. Notice of any such meeting shall be announced to the public on-air and by public posting on the Corporation's website and by any other such means as the Board shall determine to be effective. Any such meeting shall allow time for public comment in addition to comments by the Community Advisory Board.

**Section 2. Compliance with the Certificate of Incorporation and Applicable Law.** If a decision to dissolve the Corporation is made, the process of dissolution and any windup activities shall be conducted in accordance with the Corporation's Certificate of Incorporation and applicable law.

**APPENDIX A:**  
**CORPORATION FOR PUBLIC BROADCASTING**  
**CERTIFICATION REQUIREMENTS FOR STATION GRANTS RECIPIENTS**



## **Certification Requirements for Station Grants Recipients**

### INTRODUCTION

This document explains the requirements of the Communications Act of 1934, 47 U.S.C. 396, et seq., as amended (“Communications Act” or “Act”), with which the recipients of Corporation for Public Broadcast (“CPB” or “Corporation”) station grants must certify their continued compliance. These requirements involve five specific areas: meetings which must be open to the public (Section 396(k)(4)); financial information which must be made available to the public (Section 396(k)(5)); community advisory boards which must be established by certain stations (Section 396(k)(8)); equal employment opportunity (“EEO”) regulations and reporting requirements which must be observed (Section 396(k)(11)) and donor list and political activities requirements (Section 396(k)(12)). CPB requires station grant recipients to certify their continued compliance with the requirements of Sections 396(k)(4), (5), (8), (11), and (12) of the Communications Act prior to receiving any grant funds.

CPB does not provide legal advice of any kind concerning any laws or regulations. Accordingly, CPB recommends that stations and licensees contact their own legal counsel directly for any and all legal advice. In any event, CPB is not responsible for any aspect of the activities stations or licensees undertake in an attempt to comply with the requirements of the Communications Act and the Corporation for Public Broadcasting described in this document. This document replaces and supersedes the booklet by the same name issued by the Corporation for Public Broadcasting in 1998

## OPEN MEETINGS REQUIREMENTS

### I. THE LAW

A. Section 396(k)(4) of the Communications Act provides that:

*“Funds may not be distributed pursuant to this subsection to the Public Broadcasting Service or National Public Radio (or any successor organization), or to the licensee or permittee of any public broadcast station, unless the governing body of any such organization, any committee of such governing body, or any advisory body of any such organization, holds open meetings preceded by reasonable notice to the public. All persons shall be permitted to attend any meeting of the board, or of any such committee or body, and no person shall be required, as a condition to attendance at any such meeting, to register such person’s name or to provide any other information. Nothing contained in this paragraph shall be construed to prevent any such board, committee, or body from holding closed sessions to consider matters relating to individual employees, proprietary information, litigation and other matters requiring the confidential advice of counsel, commercial or financial information obtained from a person on a privileged or confidential basis, or the purchase of property or services whenever the premature exposure of such purchase would compromise the business interests of any such organization. If any such meeting is closed pursuant to the provisions of this paragraph, the organization involved shall thereafter (within a reasonable period of time) make available to the public a written statement containing an explanation of the reasons for closing the meeting.”*

B. Section 397(5) of the Act provides that:

*“The term „meeting“ means the deliberations of at least the number of members of a governing or advisory body, or any committee thereof, required to take action on behalf of such body or committee where such deliberations determine or result in the joint conduct or disposition of the governing or advisory body’s business, or the committee’s business, as the case may be, but only to the extent that such deliberations relate to public broadcasting.”*

### II. INTERPRETATIONS

#### A. Effect

This provision of the law prohibits CPB from distributing its federally appropriated funds to PBS or NPR or to public broadcasting station permittees or licensees, unless the governing bodies of those organizations, any committee of such governing bodies, or any advisory bodies hold open meetings preceded by reasonable notice to the public. The language of the statute, read in conjunction with its legislative history, requires that all meetings of governing bodies, committees thereof and advisory committees thereto must be open to the public.

## 1. Open Meetings

Because of the statutory definition of “meeting,” not all sessions of governing bodies, their committees, or advisory bodies are subject to the open meetings provisions of the Act. The following elements must be present in order for a board, etc., session to meet the statutory definition of a meeting: (1) a quorum, for purpose of taking action, must be in attendance; (2) deliberations must take place; and (3) the deliberations must determine or result in the joint conduct or disposition to the business of the particular body, but only to the extent that such deliberations relate to public broadcasting.

The statute does not preclude telephonic meetings, meetings conducted via the Internet, or meetings conducted by video conferencing. If an organization’s by-laws allow for meetings by telephone, Internet, or video conferencing, the body may meet in such a manner. However, these alternative meeting formats must still meet the other statutory requirements such as providing reasonable notice and allowing the public to attend, which in the case of an alternative meeting format would mean the ability to listen, observe, or participate.

The affected organization will have to determine on a case-by-case basis whether the elements that make a gathering into a “meeting” subject to the open meeting provisions are present. For example, certain gatherings of governing and advisory bodies are not “meetings” because they do not involve deliberations to determine joint conduct. Examples of gatherings that are not “meetings” include: background or status briefings; sessions to stuff envelopes or complete other menial tasks; events that are purely social in nature; or assemblies to assign responsibilities for particular projects to individual board members for fact finding and subsequent report to the body as a whole.

Similarly, some deliberations do not “relate to public broadcasting” and would not fall within the requirements of the open meetings section of the law. For example, a university or school board licensee could be expected to conduct board meetings that would cover subjects not even remotely related to public broadcasting such as deliberations on university housing, faculty appointments, or changes to tuition. On the other hand, a board at a community licensee, whose sole responsibility is related to public broadcasting, would rarely deliberate about matters unrelated to public broadcasting. Again, these determinations must be made on a case-by-case basis.

## 2. Reasonable Notice to the Public

The law provides that all meetings that are required to be open to the public must also be preceded by “reasonable notice to the public.”

“Reasonable notice” normally means notice that is both reasonably expected to inform and appropriate to the purpose of the notice. Notice should be directed toward those individuals who could be reasonably expected to have an interest in attending the meeting. Notice should also be given in a manner that could be expected to reach such individuals.

The Conference Report acknowledges that there may be occasions when an open meeting preceded by reasonable notice would be impracticable. The Report states, “from time to time emergency situations or the convenience of teleconferencing may make it impractical to hold an open meeting preceded by reasonable notice. In such situations, requiring advance notice to the public for committee meetings would be unreasonable. Although the conferees understand that meetings conducted by telephone cannot be open to the public, the conferees expect that the entities involved will attempt to minimize those instances.”

### 3. All Persons Shall Be Permitted by the Stations to Attend

One troublesome part of the open meeting requirement is that physical space, as well as fire department occupancy regulation, may prohibit “all persons” from attending a meeting. Although it would not be reasonable to expect an organization to rent a convention hall to accommodate persons who may wish to attend meetings, it would nevertheless seem appropriate that the various bodies conduct their respective meetings in facilities that would accommodate a reasonable audience. The rule of reasonableness should guide in this area and the organization should take into account factors such as past attendance, the meeting’s agenda, and current events. The law would not require a station to undergo unreasonable expenses and efforts to accommodate the public. By the same token, the law would not tolerate failure to provide reasonable accommodation of the public. Therefore, it would be inconsistent with the open meetings requirement to reduce the size of current meeting facilities or otherwise deter the public from attending open meetings.

Likewise, security procedures may impact the public’s ability to attend meetings without providing identification. Since the statute prohibits organizations from requiring members of the public, as a condition to attendance, to register their name or to provide any other information, organizations should not hold meetings at locations where access is privately restricted. However, it would be unreasonable to require organizations to hold meetings in unsafe locations or otherwise fail to protect stations employees, volunteers and those attending meetings, or ignore security procedures in emergency circumstances during governmentally mandated heightened security alerts. The rule of reasonableness should apply to security procedures. An organization must make reasonable efforts to allow unrestricted access to open meetings, while maintaining a reasonably safe environment and bearing in mind that Federal, state, and local security regulations may unavoidably impact such access.

If a meeting, which is open to the public, is conducted telephonically or via video conferencing or the Internet, the organization, in addition to complying with the other provisions of this section, must provide the public with access to the proceedings through a location at which the public may observe or listen or by disseminating call-in information that permits the public to observe or listen from another location in a manner consistent with the reasonable notice provisions herein. To the extent practicable, if the organization provides a location for the public to observe or listen to a meeting, this location must be reasonably accessible to members of the public who could be expected to have an interest in attending the meeting. If the organization allows the public to listen to or observe the meeting from another location, the station may not charge for the phone call, notwithstanding normal telephone toll charges.

#### 4. Explanation of Closed Meetings

If a session is closed to the public pursuant to the statutory exceptions (discussed in part C below), a written statement containing an explanation of the reasons for closing the meeting must be made publicly available within a reasonable period of time thereafter. The explanation for a closed meeting, however, does not have to be made available in the same manner as the notice of an open meeting. The explanation for the closing of a meeting preferably should use the words of the statute.

#### B. Prohibitions

Although PBS, NPR, or stations cannot require that a person register by name or provide any other information as a condition of attending a meeting, they may request identification for other purposes, such as ensuring reasonable security. For example, an organization providing priority seating arrangements for those who formally request such seating space ahead of time may request those individuals to identify themselves. This procedure would be acceptable, because it is a requirement only for priority seating, not attendance. Similarly, the organization could place a sign-up sheet at the entrance to the meeting so that members of the public may voluntarily do something such as submit a comment for consideration, sign-up for volunteer work or engage in similar activities. This is acceptable as long as providing information is voluntary for the public and not a requirement to attend.

#### C. Exceptions

The law also provides exceptions to the open meeting requirement. Closed sessions can be conducted to consider matters relating to individual employees, proprietary information, litigation, and other matters requiring the confidential advice of counsel, commercial or financial information obtained from a person on a privileged or confidential basis, or the purchase of property or services whenever the premature exposure of such purchase would compromise the business interests of any such organization.

#### D. Result of Noncompliance

The law provides that CPB may not distribute any of its funds to PBS, NPR, or the licensee or permittee of any public broadcast station that does not hold open meetings in compliance with this provision.

### III. MINIMUM COMPLIANCE REQUIREMENTS

In order to comply with the open meetings requirements of the Act:

A. PBS, NPR (or their successor organizations) and any licensee or permittee of a public broadcasting station must --

1. Open the meetings of its governing body and any committee of its governing body to the public;
2. Open the meetings of its community advisory board or any advisory body of the governing board to the public;
3. Give reasonable notice to the public of the fact, time and place of an open meeting at least one week (7 days) in advance of the scheduled date of an open meeting;
4. Allow all persons to attend any open meeting of the board, committee or advisory board, without requiring, as a condition of attendance, that the person register or provide such person's name or any other information, except as would be reasonably required to maintain a safe meeting environment; and
5. If a meeting is closed pursuant to the exceptions recognized by the law, make available to the public, within a reasonable period of time after the closed meeting, a written statement containing an explanation of the reason(s) for closing the meeting.

B. PBS, NPR, or any public broadcasting station may conduct meetings of the governing body, its committees or advisory groups that are not open to the public as long as they deal with matters considered to be exceptions to the open meeting requirement.

C. Minimum compliance for "reasonable notice" requires that:

1. Notice is placed in the "Legal Notices" or the radio and television schedules section of a local newspaper in general circulation in the station's coverage area; or, notice is available through a recorded announcement that is accessible on the station's phone system; or, notice is available through an announcement that is accessible on the station's web page; and
2. Notice is communicated by letter, e-mail, fax, phone, or in person to any individuals who have specifically requested to be notified; and

3. The station makes on-air announcements on at least three consecutive days once during each calendar quarter that explain the station's open meeting policy and provide information about how the public can obtain information regarding specific dates, times, and locations.

D. For a station to satisfy the requirement that a written explanation be offered after a meeting is closed to the public:

1. The explanation of the reasons for a closed meeting should be distributed in the same manner as the notice of an open meeting, made available to the public at the station's offices, posted on the station's web site, or by offering to mail a copy of the explanation to any person who requests one. If applicable, a reasonable charge for this service, or the requirement of a self-addressed, stamped envelope, may be considered.

2. In the case of regularly scheduled meetings that are usually open to the public, the station should give advance notice of the fact that such a meeting will be closed when the occasion arises. The notice that such a normally open meeting will be closed should be disseminated in the same manner as the notice of an open meeting. Meetings that are not regularly scheduled would not need an advance notice of closing.

#### IV. SUGGESTIONS FOR COMPLIANCE

Each station is encouraged to fashion its own maximum involvement of the community beyond the minimum requirements. It is CPB's position that only through enthusiastic and vigorous efforts can the intent of the Congress, as reflected in the law, be fully realized. Therefore, CPB recommends that stations make copies of the minutes of all open meetings available to the public on the station website, by mail, or at the station's office upon request. A reasonable charge to cover copying or postage may be considered for mailing. If a member of the public wishes to inspect the minutes at the station, it would not be unreasonable to require an appointment with the station be made as long as the process is not burdensome to the public.

#### V. CPB PROCEDURES FOR COMPLIANCE AND CERTIFICATION

##### A. Documentation

1. Each recipient of a CPB station grant, after reviewing the above information, shall develop documentation indicating the manner of compliance with this requirement. This documentation shall contain information that will indicate, for example, the recognition of the open meeting provision by the relevant boards and committees, the procedure for open meetings, the method used to give reasonable notice to the public, examples of notices of open meetings, examples of statements of explanation for closed meetings, and other information indicating community response, if any, to

the open meetings.

2. The documentation shall be kept at a reasonable location by each station and made available to CPB, upon request, to determine the fact and extent of compliance. The documentation shall also be made available to CPB auditors who may be making periodic audits of a station.

#### B. Certification

1. CPB currently requires each recipient of a CPB station grant to certify its continued compliance with the open meetings requirement. The annual certification is part of the Certification of Eligibility form(s) which are included in the Stations Grant Management System ("SGMS") and must be filled out by each CPB station grantee.

2. All such Certification of Eligibility forms must be completed in their entirety and executed by two different individuals: (1) an authorized official of the licensee responsible for executing grants and/or contracts for the licensee who has knowledge and authority to certify that the licensee and its station meet or exceed each of the eligibility criteria listed in the Certification of Eligibility (e.g., chairman, treasurer or secretary of the board of directors, university vice president for finance, president of the school board); and (2) the chief executive officer in charge of the operation of the station (e.g., president, general manager, or station manager).



## OPEN FINANCIAL RECORDS REQUIREMENTS

### I. THE LAW

A. Section 396(k)(5) of the Communications Act provides that:

*“Funds may not be distributed pursuant to this subsection to any public telecommunications entity that does not maintain for public examination copies of the annual financial and audit reports, or other information regarding finances, submitted to the Corporation pursuant to subsection (l)(3)(B).”*

B. Section 396(l)(3)(B) of the Act requires that each public telecommunications entity receiving funds from CPB shall be required:

*“(i) to keep its books, records, and accounts in such form as may be required by the Corporation;*

*“(ii)(I) to undergo a biennial audit by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State, which audit shall be in accordance with auditing standards developed by the Corporation, in consultation with the Comptroller General; or*

*“(II) to submit a financial statement in lieu of the audit required by subclause (I) if the Corporation determines that the cost of such audit on such entity is excessive in light of the financial condition of such entity; and*

*“(iii) to furnish biennially to the Corporation a copy of the audit report required pursuant to clause (ii) as well as such other information regarding finances (including an annual financial report) as the Corporation may require.”*

C. 1. Section 397(12) of the Act defines the term “public telecommunications entity” as:

*“any enterprise which-*

*“a. is a public broadcast station or a noncommercial telecommunications entity; and*

*“b. disseminates public telecommunications services to the public.”*

2. Section 397(7) of the Act defines the term “noncommercial telecommunications entity” as: *“any enterprise which-*

*“a. is owned and operated by a State, a political or special purpose subdivision of a State, a public agency, or a nonprofit private foundation, corporation,*

*“b. has been organized primarily for the purpose of disseminating audio or video*

*noncommercial educational and cultural programs to the public by means other than a primary television or radio broadcast station, including but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, microwave, or laser transmission through the atmosphere.”*

3. Section 397(14) of the Act defines the term “public telecommunications services” as

*“noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications.”*

## II. INTERPRETATIONS

### A. Effect

The provisions of the law in Section I.A., above, prohibit CPB from distributing its federally appropriated funds to any public telecommunications entity unless that entity allows public examination of any annual financial reports filed with CPB, any audit reports or financial statements on the financial condition of the station performed in compliance with Section 396 (l)(3)(B) (which requires at least a biennial audit or, under certain circumstances, a financial statement), and any other information regarding finances that CPB may request of an entity under Section 396 (l)(3)(B). The open records requirement applies to public telecommunications entities that offer public telecommunications services to the public, as those terms are defined in Section II.C., above. It does not apply to PBS, NPR, or independent production entities.

### B. Exceptions

1. Financial information provided to CPB to accompany a proposal for funding need not be made available for public inspection before the proposal is accepted for funding by CPB. After acceptance by CPB for funding, the financial information should be made available to the public at the station as a part of the CPB funding agreement. Proprietary information may be withheld. If the proposal is rejected by CPB, it need not be made available for public inspection.

2. Financial support information required by Section 396(l)(3)(C) - (D) to be kept by recipients of CPB funds to substantiate a CPB or U.S. General Accounting Office audit is not subject to the open records requirement.

3. Any financial records that deal with personnel matters and that would be kept confidential under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), also would not be required to be made available for public inspection.

### C. Result of Noncompliance.

The law provides that CPB may not distribute any of its funds to any public telecommunications entity that does not maintain for public examination copies of the records referred to in this provision.

## III. MINIMUM COMPLIANCE REQUIREMENTS

All public telecommunications entities must make the following types of records available for public inspection:

A. Annual financial reports filed with CPB;

B. Audited statements or other financial statements filed with CPB. These include the reports from CPB required audits conducted by independent certified public accountants or state-certified independent public accountants, according to the CPB adopted audit standards, and the financial statements which CPB may permit to be submitted in lieu of such audit reports under certain circumstances; and

C. Other information regarding finances submitted to CPB related to any funding agreement with CPB that requires a financial report.

## IV. SUGGESTIONS FOR COMPLIANCE

A number of mechanisms are available to comply with these provisions. While the choice of mechanism is left to each grantee's discretion, each grantee should choose the method it believes best accommodates the public.

The basic question is how to make the reports available. Because all stations must maintain a public inspection file by FCC rule, one alternative would be for a station to include publicly available financial records in the same location as this public file for convenient reference. If this information is kept in a different place, the documents should be maintained in a readily accessible location. Another alternative would be for a station to make this financial information available on the station's web site, with arrangements available for providing individuals with this information if they are unable or unwilling to use the Internet to access this information. In any event, arrangements for photocopying the financial records, at cost, could be made in a manner similar to the arrangements for reproducing other documents in the public file. In this regard, the station should refer to FCC regulations. It would not be unreasonable to require an appointment with the station to review the financial reports as long as the process is not burdensome to the public. Stations should note that this is a separate requirement from the FCC's public inspection files requirement. As such, stations should consult the FCC's rules for its provisions pertaining to the public's access to the FCC mandated public inspection file.

## V. CPB PROCEDURES FOR COMPLIANCE AND CERTIFICATION

### A. Documentation

1. Each station, after reviewing the above information, is to develop documentation indicating the manner of compliance with this requirement. This documentation shall contain information that will indicate, for example, the type of records made available for public inspection (by specific description), the mechanism by which the records are made available (and, if appropriate, the location of these records), the arrangements made for reproduction of the documents by members of the public, and any limitations placed on access to the file by the entity.

2. The documentation shall be kept at a reasonable location by each station and be made available to CPB, upon request, to determine the fact and extent of compliance. The documentation shall also be available to CPB auditors upon request in the course of a periodic audit

### B. Certification

1. CPB currently requires that each recipient of a CPB station grant certify its continued compliance with the open records requirements. This annual certification is part of the Certification of Eligibility form(s) which are included in the Stations Grant Management System ("SGMS") and must be filled out by each CPB station grantee.

2. All such Certification of Eligibility forms must be completed in their entirety and executed by two different individuals: (1) an authorized official of the licensee responsible for executing grants and/or contracts for the licensee who has knowledge and authority to certify that the licensee and its station meet or exceed each of the eligibility criteria listed in the Certification of Eligibility (e.g., chairman, treasurer or secretary of the board of directors, university vice president for finance, president of the school board); and (2) the chief executive officer in charge of the operation of the station (e.g., president, general manager, or station manager). 13

## COMMUNITY ADVISORY BOARD REQUIREMENTS

### I. THE LAW

A. Section 396(k)(8) of the Communications Act provides that:

*“(A) Funds may not be distributed pursuant to this subpart to any public broadcast station (other than any station which is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency) unless such station establishes a community advisory board. Any such station shall undertake good faith efforts to assure that: (i) its advisory board meets at regular intervals; (ii) the members of its advisory board regularly attend the meetings of the advisory board; and (iii) the composition of its advisory board are reasonably representative of the diverse needs and interests of the communities served by such station.*

*“(B) The board shall be permitted to review the programming goals established by the station, the service provided by the station, and the significant policy decisions rendered by the station. The board may also be delegated any other responsibilities, as determined by the governing body of the station. The board shall advise the governing body of the station with respect to whether the programming and other policies of such station are meeting the specialized educational and cultural needs of the communities served by the station, and may make such recommendations as it considers appropriate to meet such needs.*

*“(C) The role of the board shall be solely advisory in nature, except to the extent other responsibilities are delegated to the board by the governing body of the station. In no case shall the board have any authority to exercise any control over the daily management or operation of the station.*

*“(D) In the case of any public broadcast station (other than any station which is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency) in existence on the effective date of this paragraph, such station shall comply with the requirements of this paragraph with respect to the establishment of a community advisory board not later than 180 days after such effective date.*

*“(E) The provision of subparagraph (A) prohibiting the distribution of funds to any public broadcast station (other than any station which is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency) unless such station establishes a community advisory board shall be the exclusive remedy for the enforcement of the provisions of this paragraph.”*

## II. INTERPRETATIONS

### A. Privately Owned Stations

The Community Advisory Board requirement provisions apply to all stations except those stations that are owned and operated by a State, a political or special purpose subdivision of a State, or a public agency. Thus, if a station is privately owned (as are all community licensees, as well as stations owned by private universities and other private organizations), it must, without exception, comply with these provisions. CPB does not provide legal advice to a station about whether its state's laws make it an entity that falls into the exception to the community advisory board requirement. It is up to each station to determine whether it is required to have a community advisory board, and act accordingly.

### B. Nature of the Community Advisory Board

1. The law provides that “[t]he role of the board shall be solely advisory in nature....” It also stipulates that the board shall advise the governing body of the station and therefore must be distinct from and independent of the governing body. The purpose of the advisory board is to provide a vehicle for effective community input to the station's governing body about station programming, community service and impact on the community from the station's major policy decisions. Congress believed that the establishment of community advisory boards would assist the stations to develop programs and policies that address the specific needs of the communities that they endeavor to serve.

2. The law is not intended to preclude stations from establishing and maintaining other types of advisory bodies.

### C. Relationship of the Community Advisory Board to the Governing Board of the Station

1. The law segregates the management and operational functions of the governing board from the functions of advisory board to ensure a clear demarcation between the governing board and the advisory board.

2. The advisory board is intended to provide the public the opportunity to be heard on station programming, community service and impact on the community of major policy decisions. All stations are encouraged to establish whatever mechanisms will be most effective, under local circumstances, to accomplish this congressionally established goal.

### D. Composition of Community Advisory Boards

The station may exercise a reasonable degree of discretion in selecting advisory board members. The board should be reasonably representative of the diverse needs and interests of the communities served by the station. No individual representative of any particular group has a legal right to membership on an advisory board. Nor does the law empower any person, court, or government agency to require a station take or refrain from taking any action with respect to a station's programming or policies. The composition of the community advisory board must reflect its independent role, and may not include members of the station staff or governing body in anything other than an ex officio or administrative capacity.

#### E. Result of Noncompliance

CPB may not distribute any of its funds to any community-licensed public broadcasting station that does not have an advisory board which meets the requirements of the law. This prohibition against the distribution of funds is the exclusive remedy for enforcement of this requirement.

### III. MINIMUM COMPLIANCE REQUIREMENTS

A. Each station that is not owned by a State, a political or special purpose subdivision of a State, or a public agency must do the following --

1. establish a community advisory board that is independent of the community licensee's governing body;
2. undertake good-faith efforts to assure that --
  - a. its advisory board meets at regular intervals;
  - b. the members of the board regularly attend the meetings of the advisory board;
  - c. the composition of the community advisory board is reasonably representative of the diverse needs and interests of the communities served by the station.

B. In addition, each licensee required to have a community advisory board must also permit the community advisory board to perform the following activities:

1. establish and follow its own schedule and agenda, within the scope of the community advisory board's statutory or delegated authority;
2. review the programming goals established by station;
3. review the community service provided by the stations;
4. review the impact on the community of the significant policy decisions rendered

by the station; and

5. advise the governing board of the station whether the programming and other significant policies of the station are meeting the specialized educational and cultural needs of the communities served by the station. The advisory board may make recommendations to the governing board to meet those specialized needs.

C. The governing board of a licensee, if it desires, may delegate other responsibilities to the advisory board to assist the governing board or station personnel. However, the law states: "In no case shall the [community advisory board] have any authority to exercise any control over the daily management or operation of the station."

#### IV. SUGGESTIONS FOR COMPLIANCE

Due to the specialized needs of each service community and the variety of station organization types, it may be more confusing than helpful to suggest ways to use community advisory groups. Maximum flexibility will better serve stations, allowing the composition, organization, and role of advisory groups to be tailored to the individual needs of the respective communities.

A licensee that owns more than one station should be aware that the law requires each station covered by this provision to have a community advisory board. A licensee with multiple stations may, at its discretion, establish a community advisory board that is shared among the stations if that community advisory board can meet all the minimum compliance requirements for each of the stations that share a community advisory board.

#### V. CPB PROCEDURES FOR COMPLIANCE AND CERTIFICATION

##### A. Documentation

1. Each community-licensed station, after reviewing the above information, is to develop documentation indicating the manner of compliance with this requirement. This documentation shall indicate, for example, the existence of a community advisory board, the mechanism used to determine its composition, organization, schedule of meetings and attendance records, the role that it plays with respect to the station, and its position relative to the organization of the station. Continued documentation of the activities of the advisory board is also encouraged.

2. The documentation shall be kept at a reasonable location by each station and be made available to CPB, upon request, to determine the fact and extent of compliance. The documentation shall also be available to CPB auditors upon request in the course of a periodic audit.

##### B. Certification



1. CPB currently requires that each recipient of a CPB station grant certify its continued compliance with the community advisory board requirements. This annual certification is part of the Certification of Eligibility form(s) which are included Stations Grant Management System (“SGMS”) and must be filled out by each CPB station grantee.

2. All such Certification of Eligibility forms must be completed in their entirety and executed by two different individuals: (1) an authorized official of the licensee responsible for executing grants and/or contracts for the licensee who has knowledge and authority to certify that the licensee and its station meet or exceed each of the eligibility criteria listed in the Certification of Eligibility (e.g., chairman, treasurer or secretary of the board of directors, university vice president for finance, president of the school board); and (2) the chief executive officer in charge of the operation of the station (e.g., president, general manager or station manager).

## **EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS**

### **I. THE LAW**

A. Section 396(k)(11) of the Communications Act provides that:

*“(A) Funds may not be distributed pursuant to this subsection for any fiscal year to the licensee or permittee of any public broadcast station if such licensee or permittee--  
“(i) fails to certify to the Corporation that such licensee or permittee complies with the Commission’s regulations concerning equal employment opportunity as published under section 73.2080 of title 47, Code of Federal Regulations, or any successor regulations thereto; or*

*“(ii) fails to submit to the Corporation the report required by subparagraph (B) for the preceding calendar year.*

*“(B) A licensee or permittee of any public broadcast station with more than five full time employees is required to file annually with the Corporation a statistical report, consistent with reports required by Commission regulation, identifying by race and sex the number of employees in each of the following full-time and part-time job categories:*

*“(i) Officials and managers.*

*“(ii) Professionals.*

*“(iii) Technicians.*

*“(iv) Semiskilled operatives.*

*“(v) Skilled craft persons.*

*“(vi) Clerical and office personnel.*

*“(vii) Unskilled operatives.*

*“(viii) Service workers.*

*“(C) In addition, such report shall state the number of job openings occurring during the course of the year. Where the job openings were filled in accordance with the regulations described in subparagraph (A)(i), the report shall so certify, and where the job openings were not filled in accordance with such regulations, the report shall contain a statement providing reasons for noncompliance. The statistical report shall be available to the public at the central office and at every location where more than five full-time employees are regularly assigned to work.”*

## II. INTERPRETATIONS

### A. Effect

1. This provision of the law prohibits CPB from distributing its federally appropriated funds to any licensee or permittee of a public broadcasting station with more than five full-time employees that has not filed with CPB the annual statistical report required by Section 396(k)(11). The statistical report must: (a) identify by race and sex the number of employees in each of eight full-time and part-time job categories (officials and managers; professionals; technicians; semi-skilled operatives; skilled craft persons; clerical and office personnel; unskilled operatives; and service workers); and (b) state the number of job openings occurring during the course of the year. The law also requires that this statistical information be made available to the public at the central office of the station and at every location where more than five full-time employees are regularly assigned to work.

2. The provision also requires that every licensee or permittee of a public broadcasting station that receives federally appropriated funds from CPB must certify to CPB that it complies with the FCC regulations concerning equal employment opportunity or any successor regulations. Each licensee or permittee of a broadcast station with more than five full-time employees must further certify that the job openings identified in the statistical reports described above were filled in accordance with such FCC regulations, or provide a statement of the reasons for not filling the positions in accordance with such regulations.

### B. Exceptions

Although licensees and permittees of public broadcast stations with five or fewer full-time employees are not subject to the reporting and public records requirements in this provision of the law, CPB does require that all station grant recipients submit annually to CPB the information required in the statistical report.

### C. Result of Noncompliance

The law provides that CPB may not distribute any of its funds to the licensees and permittees of public broadcast stations that do not make the necessary certifications, file the required statistical report annually with CPB, or make such statistical information available to the public as required by the law.

## III. MINIMUM COMPLIANCE REQUIREMENTS

### A. All Licensees and Permittees

The law requires that all licensees and permittees of public broadcasting stations that receive federally appropriated funds from CPB must certify to CPB that they comply with the above-referenced FCC regulations concerning equal employment opportunity.

## B. Licensees and Permittees with More Than Five Full-time Employees

In addition to III.A above, the law requires that licensees and permittees of public broadcast stations with more than five full-time employees must do all of the following:

1. file annually with CPB the statistical report described above (although not required by law for stations with five or fewer employees, CPB requires that all station grant recipients file such statistical information with CPB annually);
2. certify that the job openings identified in the statistical report were filled in accordance with FCC regulations or provide a statement of the reasons for not filling the positions in accordance with such regulations; and
3. make this statistical information available to the public at the central office of the station and at every location where more than five full-time employees are regularly assigned to work.

## IV. SUGGESTIONS FOR COMPLIANCE

As to the FCC regulations regarding EEO, it must be understood that CPB does not regulate or enforce EEO or nondiscrimination compliance. Neither does CPB provide legal counsel of any kind concerning EEO or nondiscrimination laws and/or regulations.

Accordingly, because the FCC's EEO regulations have changed in recent years, CPB recommends that stations contact their legal counsel directly for any and all legal advice in this regard.

CPB does suggest, however, that stations may be able to satisfy the public information requirement by making available the appropriate sections from the CPB Stations Activity Benchmarking Study ("SABS") or the annual Stations Activities Survey ("SAS") (see V.A., below). For additional suggestions about complying with the requirement that the statistical information be made available to the public, see Part IV of the OPEN FINANCIAL RECORDS REQUIREMENTS section.

## V. CPB PROCEDURES FOR COMPLIANCE AND CERTIFICATION

### A. Reporting

CPB currently requires that the statistical information be provided annually in the employment portion of the Stations Activity Benchmarking Study ("SABS") or the annual Station Activities Survey ("SAS") which every CPB supported station -- regardless of the size of their work force -- must file with CPB.

## B. Certification

1. CPB currently requires that the certification of compliance with the FCC's EEO regulations, and, if necessary, the statement of reasons for not filling positions in accordance with the FCC regulations, be provided annually in the Stations Grant Management System ("SGMS") and must be filled out by each CPB station grantee.
2. All such Certification of Eligibility forms must be completed in their entirety and executed by two different individuals: (1) an authorized official of the licensee responsible for executing grants and/or contracts for the licensee who has knowledge and authority to certify that the licensee and its station meet or exceed each of the eligibility criteria listed in the Certification of Eligibility (e.g., chairman, treasurer or secretary of the board of directors, university vice president for finance, president of the school board); and (2) the chief executive officer in charge of the operation of the station (e.g., president, general manager, or station manager).

## C. Documentation

1. Each licensee or permittee of a public broadcast station, after reviewing the above information, is to develop documentation that may be used to verify the statistical employment information reported to CPB through the SABS or SAS and/or included in the public record. In addition, each station should develop documentation indicating the manner of compliance with public record requirements of this provision of the law. This documentation should contain information that will indicate, for example, the type of records made available to the public (by specific description), the mechanisms by which the records are made available (and, if appropriate, the location of these records), the arrangements made for reproduction of the documents by members of the public, and any limitations placed on access to such records by the licensee.
2. The documentation shall be kept at a reasonable location by each station and made available to CPB, upon request, to verify the accuracy of the statistical employment information, and to determine the fact and extent of compliance with the public record requirement of this provision of the Communications Act. However, CPB will not investigate (a) whether the stations are in compliance with the FCC's EEO regulations, or (b) any EEO complaints filed against any licensee or permittee of a public broadcast station.
3. The documentation shall also be made available to CPB auditors upon request in the course of a periodic audit.

## VI. OTHER EEO REQUIREMENTS

It is important to note that this is NOT a comprehensive summary of all the EEO requirements or nondiscrimination provisions found in the Communications Act or in other laws and regulations with which broadcast stations must comply. (For example, such other laws may include, but are not limited to: the Americans with Disabilities Act of 1990 (42 U.S.C. 12101); the Civil Rights Act of 1964 (42 U.S.C. 2000e); the Equal Pay Act of 1963 (29 U.S.C. 206); the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621-34); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); Title IX of the Education Amendment of 1972 (20 U.S.C. 1681); and Title V of the Rehabilitation Act of 1973 (29 U.S.C. 790-94).

In addition, Section 298 of the Communications Act (47 U.S.C. 398) also contains important EEO requirements of which every station must be aware. Again, since CPB does not provide legal advice to stations, it is recommended that the stations consult their legal counsel for assistance in complying with all of the applicable laws and regulations concerning EEO and nondiscrimination.

## **DONOR LIST AND POLITICAL ACTIVITIES REQUIREMENTS**

### **I. THE LAW**

A. Section 396(k)(12) of the Communications Act provides that:

*“(12) Funds may not be distributed under this subsection to any public broadcasting entity that directly or indirectly-*

*“(A) rents contributor or donor names (or other personally identifiable information) to or from, or exchanges such names or information with, any Federal, State, or local candidate, political party, or political committee; or*

*“(B) discloses contributor or donor names, or other personally identifiable information, to any nonaffiliated third party unless-*

*“(i) such entity clearly and conspicuously discloses to the contributor or donor that such information may be disclosed to such third party;*

*“(ii) the contributor or donor is given the opportunity before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and*

*“(iii) the contributor or donor is given an explanation of how the contributor or donor may exercise that nondisclosure option.”*

B. Section 397(11) of the Act states: *“The term “public broadcasting entity” means the Corporation, and licensee or permittee of a public broadcast station, or any nonprofit institution engaged primarily in the production, acquisition, distribution, or dissemination of educational and cultural television or radio programs.”*

### **II. INTERPRETATIONS**

#### **A. Definitions**

1. CPB defines “candidate” to mean an individual who seeks election to Federal, State or local office, or nomination for such election.

2. CPB defines “political party” to mean an association, committee, or organization which nominates a candidate for election to any Federal, State, or local office whose name appears on an election ballot as the candidate of such association, committee, or organization.

3. CPB defines “political committee” as a committee that is authorized by a candidate or whose primary purpose is the election of such candidate to Federal, State or local office.

4. For purposes of this policy, CPB considers a third party person, company, partnership or other entity to be a “nonaffiliated” third party, unless such third party is acting on behalf of and at the request of the public broadcasting entity for the purposes of the public broadcasting entity’s fundraising development.

## B. Effect

### 1. Political Lists.

This provision of the law prohibits CPB from distributing its federally appropriated funds to public broadcasting entities (as defined in Section 397(11) of the Act) that rent contributor or donor names (or other personally identifiable information) to or from, or exchange such names or information with, any Federal, State, or local candidate, political party, or political committee. Therefore, it is CPB policy that grantees shall not engage in the exchange, rental, or sale of donor or member names to, from or with any candidate, political party, or political committee, except as required by law or judicial process. This prohibition applies whether or not the contributor or donor has given permission for the exchange of names or other information.

### 2. Donor or Contributor Privacy.

Public broadcasting entities receiving CPB funds must not disclose contributor or donor names, or other personally identifiable information, to any nonaffiliated third party unless three specific requirements are met: (1) the CPB grantee clearly and conspicuously discloses to the contributor or donor that personally identifiable information may be disclosed to nonaffiliated third parties; (2) before the time that any information is initially disclosed, the contributor or donor is given the opportunity to direct that such information not be disclosed to nonaffiliated third parties; and (3) the contributor or donor is given an explanation of how the contributor or donor may exercise that nondisclosure option.

a. CPB grantees must maintain active control over their membership and donor lists, and take all appropriate measures to prevent unauthorized use of these lists. This requirement applies to the station and third parties working for the station, including but not limited to list brokers, mail-list management organizations, Friends organizations, fundraising organizations, or advertising or public relations agencies, to abide by a grantee’s compliance requirements, except as otherwise required by law or judicial process.

b. CPB grantees must not disclose contributor or donor names or other personally



identifiable information to any nonaffiliated third party unless, before the time that such information is initially disclosed, the grantee clearly and conspicuously discloses to all of its contributors and donors that such personal information may be disclosed to nonaffiliated third parties. The grantee shall give the contributor or donor the opportunity to direct that such information not be disclosed to nonaffiliated third parties, and give the contributor or donor an explanation of how to exercise that nondisclosure option, except when such disclosure is required by law or judicial process.

c. CPB grantees must periodically remind contributors or donors of any potential for sale, rental, lease, loan, trade, gift, donation, transfer, or exchange of their names and personally identifiable information; and offer a means by which the names and other personally identifiable information may be suppressed upon request; and suppress the names as requested, except as otherwise required by law or judicial process.

### 3. Record Retention.

CPB requires that grantees maintain complete, accurate, and secure records by which it may be assured that grantees are in compliance with all applicable laws and regulations of the Federal government relating to this policy, and the eligibility requirements for public broadcasting entities as established by the Corporation. These records may be maintained in any format; they must be maintained for a period not less than three years. A grantee may contract with an affiliated third party to maintain the grantee's records, provided that the records are maintained in accordance with CPB's policies. If a grantee utilizes an affiliated third party to maintain records, the grantee retains and bears the responsibility of ensuring the records are maintained in compliance with CPB policies.

### C. Limitation.

#### Non-political Organizations.

A public broadcasting entity may buy, sell, exchange, lease, or rent donor or contributor lists to, from, or with other organizations or individuals provided that such organizations or individuals are not candidates for Federal, State or local office, political parties, or political committees; and further provided that the public broadcasting entity complies with all of the provisions of CPB's donor list policy provisions relating Section 396(k)(12) of the Act.

## III. MINIMUM COMPLIANCE REQUIREMENTS

A. All public telecommunications entities, including all station grant recipients, must do the following:

1. Annually certify to CPB their continued compliance with the laws and regulations

of the Internal Revenue Service, and with all other applicable Federal law or regulations governing political activity and lobbying in effect at the time of certification;

2. Not sell, rent, lease, loan, trade, give, donate, transfer or exchange their membership or donor names to, with or from any candidate for Federal, State or local office, political committees, or political parties for any purpose whatsoever, except as otherwise required by law or judicial process;

3. Maintain active control of their contributor and donor lists, and take all appropriate measures to ensure against unauthorized use of such lists including requiring any third party, including but not limited to list brokers, mail-list management organizations, Friends organizations, fundraising organizations, or advertising or public relations agencies, to abide by a grantees' compliance requirements, except as otherwise required by law or judicial process.

4. Refrain from disclosing contributor or donor names or other personally identifiable information to any nonaffiliated third party unless, before the time that such information is initially disclosed, they clearly and conspicuously disclose to contributors and donors that such personal information may be disclosed to a nonaffiliated third party. If such disclosure is not required by law or judicial process, the grantee shall give the contributor or donor the opportunity to direct that such information not be disclosed to a nonaffiliated third party, and give the contributor or donor an explanation of how to exercise that nondisclosure option; and

5. Periodically remind contributors or donors of any potential for sale, rental, lease, loan, trade, gift, donation, transfer, or exchange of their names and personally identifiable information, and offer a means by which the names and other personally identifiable information may be suppressed upon request; and suppress the names as requested, except as required by law or judicial process.

B. All public telecommunications entities, including all CPB grantees, must maintain complete, accurate, and secure records of all uses of membership and donor lists for fundraising purposes, and must furnish such records to CPB on request.

C. Result of Noncompliance. At its discretion, CPB may disqualify grantees from eligibility to receive, in whole or in part, Station Grants or other CPB grants or awards.

#### IV. CPB PROCEDURES FOR COMPLIANCE AND CERTIFICATION

##### A. Documentation

1. Each recipient of a CPB station grant, after reviewing the above information, shall develop documentation indicating the manner of compliance with this requirement.

2. The documentation shall be kept at a reasonable location by each station and made available to CPB, upon request, to determine the fact and extent of compliance. The documentation shall also be made available to auditors who may be making periodic audits of a station.

#### B. Certification

1. CPB will require that each recipient of a CPB station grant annually certify its continued compliance with the mailing list and political activities requirements. The annual certification will be part of the Stations Grant Management System ("SGMS") and must be filled out by each CPB station grantee.

2. All such Certification of Eligibility forms must be completed in their entirety and executed by two different individuals: (1) an authorized official of the licensee responsible for executing grants and/or contracts for the licensee who has knowledge and authority to certify that the licensee and its station meet or exceed each of the eligibility criteria listed in the Certification of Eligibility (e.g., chairman, treasurer or secretary of the board of directors, university vice president for finance, president of the school board); and (2) the chief executive officer in charge of the operation of the station (e.g., president, general manager, or station manager).

#### V. OTHER REQUIREMENTS

A. Section 501(c)(3) – The Internal Revenue Code; Tax Exempt Organizations' Lobbying and Political Activities Accountability Act of 1987:

501(c)(3) organizations must:

*"...not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office."*

B. The Internal Revenue Service may revoke the 501(c)(3) status of any organization that fails to comply with its rules, and may levy fines in the nature of excise taxes, on the organization and/or its leaders who knowingly engaged in activities in violation of its rules.

C. The Internal Revenue Service has regulations stating that no organization may qualify for section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (i.e. lobbying).

**APPENDIX B**

**RADIO CATSKILL**

**CONFLICT OF INTEREST POLICY**

**Radio Catskill  
Conflict of Interest Policy  
& Annual Disclosure Statement  
for Trustees, Officers and Key Employees**

**Adopted May 21, 2014**

*Capitalized terms, which are bolded on initial use,  
have the meaning set forth in the Appendix to this Policy.*

Radio Catskill (the “**Corporation**”) is a not-for-profit corporation formed under the laws of the State of New York. The trustees, officers and **Key Employees** of the Corporation have a duty to serve the purposes to which the Corporation is dedicated and to conduct the affairs of the Corporation in a manner consistent with such purposes and not to advance their personal interests. This Policy is intended to ensure that the trustees, officers and Key Employees act in the Corporation’s best interest and comply with applicable legal requirements. This Policy is designed to promote the identification, disclosure, evaluation and disposition of any real, potential, or apparent conflicts of interest that might, in fact or in appearance, call into question their duty of undivided loyalty to the Corporation.

Article 1. Circumstances that Constitute a Conflict of Interest

All **Covered Transactions** are circumstances that constitute a perceived, potential or actual conflict of interest and as such are subject to the terms of this Policy. All Covered Transactions shall be approved by the **Board** or an **Authorized Body** only after the Board or Authorized Body determines that the Covered Transaction is fair, reasonable and in the best interest of the Corporation.

Article 2. Procedures for Disclosing, Addressing and Documenting Covered Transactions

- (a) *Procedures Applicable to the Individual.* When a trustee, officer or Key Employee has a direct or indirect interest in a Covered Transaction, he or she:
  - (i) must immediately disclose in writing the existence and circumstances of the **Personal Interest** in the Covered Transaction (including the material facts concerning his or her interest) to the Authorized Body;
  - (ii) in the case of a Key Employee, the Key Employee must inform his or her supervisor (or in the case of the General Manager, the President) of the Personal Interest, who shall immediately disclose such Personal Interest to the Authorized Body;

- (ii) must refrain from participating in, being physically present during, or attempting to influence the deliberations or voting on the Covered Transaction; provided that, at the request of the Authorized Body and prior to any vote, the trustee, officer or Key Employee may present background information or answer questions on the Covered Transaction.
- (b) *Procedures Applicable to the Corporation.* Once an Authorized Body becomes aware of a Covered Transaction, the following procedures apply:
- (i) *Confirmation of Trustee, Officer, and Key Employee Actions.* The Authorized Body must confirm that the steps required under paragraph (a) above have been and are being taken.
  - (ii) *Fairness and Reasonableness.* Before approving a Covered Transaction, the Authorized Body must determine that the Covered Transaction is fair, reasonable and in the Corporation's best interest.
  - (iii) *Comparability Data.* The Authorized Body must obtain and rely on comparable market data, to the extent available, in making the determination that the Covered Transaction is fair, reasonable and in the Corporation's best interest.
  - (iv) *Alternative Transactions.* The Authorized Body must consider alternative transactions, to the extent available, if the Covered Transaction is a **Related Party Transaction** in which a **Related Party** has a substantial financial interest (as such term is interpreted from time to time for purposes of Section 715 of the New York Not-for-Profit Corporation Law).
  - (v) *Materiality to the Corporation.* The Authorized Body must determine whether the Covered Transaction is material to the financial, reputational or other interests of the Corporation, in which event consideration must be given to alternative transactions, agreements or arrangements, to the extent available. If an Authorized Body other than the Board makes a determination that the Covered Transaction is material, it (A) must promptly notify the Board of this determination and (B) may condition its approval, if any, of the Covered Transaction on the further review, approval, endorsement or other input of the Board.
  - (vi) *Voting.* All determinations and approvals with respect to a Covered Transaction require the affirmative vote of not less than a majority of the members of the Authorized Body present

at a meeting of the Authorized Body (provided a quorum is present and no greater portion is required by applicable law or the Corporation's Certificate of Incorporation or Bylaws). Interested Trustees may be counted solely for determining the presence of a quorum. Notwithstanding the foregoing, the salaries, if any, of officers may be set only by the affirmative vote of a majority of the **Entire Board**.

- (vii) *Contemporaneous Documentation.* All disclosures and recusals with respect to a Covered Transaction together with the basis for all determinations and approvals of the Authorized Body must be contemporaneously documented in writing (including in the minutes of any meeting at which the Covered Transaction was discussed and voted on).

This documentation must include:

- a. the terms of the Covered Transaction and the date approved or disapproved;
  - b. the Related Party's Personal Interest in the Covered Transaction;
  - c. an account of the consideration of comparable market data and alternative transactions, agreements or arrangements, and information about those alternative transactions, agreements or arrangements, to the extent considered or available;
  - d. the members of the Authorized Body who were present and who voted on the Covered Transaction, including a statement that the Related Party (and any trustee, officer or Key Employee affiliated with the Related Party) was not present during the deliberation or vote of the Board or the Authorized Body on the Covered Transaction;
  - e. a statement that the Related Party, if a trustee, abstained from voting on the Covered Transaction;
  - f. any actions taken by a member of the Authorized Body having a conflict of interest; and
  - g. confirmation that the documentation was reasonably accurate and complete.
- (viii) *Disclosure to the Board or Audit Committee.* If a Covered Transaction is before an Authorized Body other than the Board or Audit Committee the existence of the matter and its

disposition (including compliance with the requirements of this Policy) must be promptly disclosed to the Board and the Audit Committee.

### Article 3. Disclosure Statement

Each trustee, officer and Key Employee of the Corporation shall furnish a completed and signed conflict of interest disclosure statement to the Secretary of the Corporation prior to his or her election to the Board or appointment as a Key Employee, as applicable, and thereafter on an annual basis. Each disclosure statement shall identify, to the best of the trustee's, officers' or Key Employee's knowledge:

- (a) any entity or trust of which the trustee, officer or Key Employee is an officer, director, trustee, member, owner (either as a sole proprietor or a partner) or employee and with which the Corporation has a relationship;
- (b) any transaction in which such director, officer or Key Employee or any of his or her respective Family Members or **Related Entities** is involved or expects to be involved; and
- (c) any other interests that could give rise to a conflict of interest.

Each trustee, officer and Key Employee must update his or her disclosure statement as necessary to reflect changes during the course of the year.

Completed disclosure statements will be available for inspection by any member of the Board and may be reviewed by the Corporation's legal counsel. The Secretary of the Corporation will provide a copy of all completed disclosure statements to the Chair of the Audit Committee and will periodically update the President of the Board and the Chair of the Audit Committee concerning compliance with the disclosure statement requirements of this Policy, and will promptly report any Covered Transaction to the Chair of the Audit Committee. The Board may, in its sole discretion, elect to treat any relationship or potential conflict of interest disclosed by a trustee, officer or Key Employee of the Corporation as a Covered Transaction subject to the terms of this Policy.

### Article 4. Loans to Trustees and Officers

No loans shall be made by the Corporation to its trustees or officers, or to any other corporation, firm, association or other entity in which one or more of its trustees or officers are trustees, directors or officers or hold a substantial financial interest, except as permitted by law.



Article 5. Adoption, Implementation and Compliance

The Board may make changes to this Policy from time to time, as it deems appropriate. The Audit Committee will oversee the implementation of, and compliance with, this Policy.

Article 6. Administration

A copy of this Policy must be furnished to each trustee, officer and Key Employee of the Corporation promptly upon its adoption. In addition, each new trustee, officer and Key Employee must be furnished with a copy of this Policy prior to the commencement of his or her duties. Each trustee, officer and Key Employee must acknowledge, not less than annually, that he or she has read and is in compliance with this Policy.

## **Appendix to the Conflict of Interest Policy for Trustees, Officers and Key Employees**

For purposes of this Policy, the following terms shall have the following meanings:

**"Affiliate"** means any entity controlled by, in control or, or under common control of the Corporation.

**"Audit Committee"** means the Committee of the Board (as defined below) comprised solely of **Independent Trustees** to which the Board has delegated responsibility for the Corporation's audit oversight function.

**"Authorized Body"** means any one of the following: (a) the Board (as defined below), (b) the Audit Committee or (c) a Committee of the Board to which the Board has delegated authority to address a Covered Transaction that is within such Committee's sphere of competence (e.g., real estate or investments).

**"Board"** means the Corporation's Board of Trustees.

**"Committee of the Board"** means a committee designated by resolution adopted by a majority of the Entire Board of Trustees and whose voting membership consists of at least three individuals, all of whom are members of the Board.

**"Corporation"** as used in this Policy means Radio Catskill.

**"Covered Transaction"** means each proposed transaction, agreement or other Transaction (including any compensation arrangement) in which:

- (a) (i) one or more Related Parties would have a financial interest and (ii) the Corporation would be a participant (including any Related Party Transaction, as defined below); or
- (b) there could be an actual or perceived conflict of interest for some other reason, including any transaction, agreement or other arrangement in which the interests of a Related Party could be seen as competing with the interests of the Corporation.

**"Entire Board"** means the total number of trustees entitled to vote that were elected at the most recently held election of trustees, including any newly created trusteeships.

**"Family Member"** means the immediate family members of a trustee, officer or Key Employee of the Corporation, consisting of the trustee, officer or Key Employee's

spouse or domestic partner<sup>3</sup>, ancestors, siblings (including half siblings), children (including adopted children), grandchildren, great-grandchildren and spouses of brothers, sisters, children, grandchildren and great-grandchildren

**“Key Employee”** means any person who is, or within the last five years has been, in a position to exercise substantial influence over the affairs of the Corporation, including but not limited to the President, General Manager, Program Director, Chief Financial Officer, or employee or officer of any other title with similar responsibilities.

**“Independent Trustee”** means a member of the Board of Trustees who:

- (a) has not been an employee of the Corporation or an Affiliate of the Corporation within the last five years;
- (b) does not have a **Family Member** who has been a Key Employee of the Corporation or an Affiliate of the Corporation within the last five years;
- (c) has not received and does not have a Family Member who has received more than \$10,000 in compensation directly from the Corporation or an Affiliate of the Corporation in any of the last five years (not including reasonable compensation or reimbursement for services as a trustee, as set by the Corporation);
- (d) does not have a substantial financial interest in and has not been an employee of, and does not have a Family Member who has a substantial financial interest in or was an Officer of, any entity that has made payments to or received payments from, the Corporation or an Affiliate of the Corporation in excess of the lesser of: (a) \$25,000 or (b) 2% of the Corporation’s consolidated gross revenue over the last five years (payment does not include charitable contribution);
- (e) is not in an employment relationship under control or direction of any Related Party and does not receive payments subject to approval of an Related Party; and
- (f) has not approved a transaction providing economic benefits to any Related Party who in turn has approved or will approve a transaction providing economic benefits to the trustee in question.

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<sup>3</sup> The term “domestic partner” is defined pursuant to N.Y. Public Health Law Section 2994-A. The term is not limited to registered domestic partner relationships and may include certain individuals who are named as beneficiary of the life insurance policy or retirement benefits of a trustee, officer or Key Employee, or upon whom a trustee, officer or Key Employee is dependent for support.

**“Related Entity”** means any entity in which a trustee, officer or Key Employee of the Corporation and/or his or her Family Members, have a thirty-five percent or greater ownership interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest of more than five percent.

**“Related Party”** means:

- (a) any trustee, officer or Key Employee of the Corporation or any affiliate of the Corporation;
- (b) any Family Member of any trustee, officer or Key Employee of the Corporation or any affiliate of the Corporation;
- (c) any entity or trust of which any individual described in paragraphs (a) or (b) above serves as a trustee, trustee, officer or employee.
- (d) any entity or trust in which any one or more individuals described in paragraphs (a) or (b) above have a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation a direct or indirect ownership interest in excess of 5%.
- (e) any other entity or trust in which one or more individuals described in paragraphs (a) or (b) above have a material financial interest.

**“Related Party Transaction”** means any transaction, agreement or any other Transaction in which a Related Party has a financial interest and in which the Corporation or any **Affiliate** of the Corporation is a participant.

**ANNUAL CONFLICT OF INTEREST DISCLOSURE STATEMENT  
For Trustees, Officers and Key Employees**

Name:

Title:

Except as previously disclosed to the Board of Trustees of Radio Catskill (the "Corporation"), or as disclosed below, neither I nor any Family Member:

- (i) is involved or expects to be involved in a Covered Transaction (including, for the avoidance of doubt, through any Related Entity);
- (ii) serve as a director, officer, trustee, member, owner (either as sole proprietor or a partner) or employee of any entity with which the Corporation has or expects to have a relationship;
- (iii) are related by blood, marriage or domestic partnership to any other director, officer or Key Employee of the Corporation.

Capitalized terms not defined herein have the same meaning as in the Corporation's Conflict of Interest Policy, a copy of which is attached hereto.

**DISCLOSURE of any circumstances as described in (i) – (iii) above:**

*(Please attach an additional sheet or sheets as necessary to fully disclose any and all relevant facts and circumstances.)*

I certify that I have received a copy of the Corporation's current Conflict of Interest Policy (attached hereto) and that I have read the Policy, understand the Policy and agree to abide by the Policy. I further certify that my disclosure, if any, is full, accurate and complete to the best of my knowledge.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_